

AMENDED IN SENATE JUNE 1, 2005  
AMENDED IN SENATE MARCH 8, 2005

**SENATE BILL**

**No. 34**

**Introduced by Senator Florez**

December 14, 2004

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~~An act to amend Section 130140 of the Health and Safety Code, relating to child development. An act to amend Section 290.46 of the Penal Code, relating to sex offenders, and declaring the urgency thereof, to take effect immediately.~~

LEGISLATIVE COUNSEL'S DIGEST

SB 34, as amended, Florez. ~~Children and family health programs. Sex offenders.~~

*Existing law requires the Department of Justice to make information concerning persons who are required to register as sex offenders available to the public via an Internet Web site, as specified. Existing law also provides that persons who have been convicted of sexual battery, or annoying or molesting a child under 18 years of age, or who have successfully completed probation after having been convicted of any of certain specified sex offenses, may apply to the department for exclusion from the Internet Web site if he or she has not been convicted of any other offense that would otherwise require that information about him or her be posted on the Internet Web site.*

*This bill would remove provisions that allow these offenders to apply for exclusion from the Internet Web site.*

*This bill would declare that it is to take effect immediately as an urgency statute.*

~~(1) The California Children and Families Act of 1998, an initiative measure, requires that the California Children and Families Program, established by the act, be funded by surtaxes imposed on the sale and~~

~~distribution of cigarettes and tobacco products and deposited into the California Children and Families Trust Fund, and that the fund be used for the implementation of comprehensive early childhood development and smoking prevention programs. Existing law establishes a state commission, First 5 California, with powers and duties relating to the administration of the act on a state level, and authorizes a county's board of supervisors to establish a county children and families commission to administer the act on a county level.~~

~~Existing law provides for the composition of a county commission including a requirement that certain members be appointed who hold positions with the county and other members be appointed from various categories of persons.~~

~~This bill would require that the majority of the membership of the commission consist of persons who do not represent the county. This bill would also grant the commission full discretion with respect to the manner of selection and appointment of its chairperson.~~

~~(2) The California Constitution provides that the Legislature may amend an initiative statute by another statute that becomes effective only when approved by the voters unless the initiative statute permits amendment without voter approval. The act provides that it may be amended by a vote of  $\frac{2}{3}$  of the membership of both houses of the Legislature and that all amendments pursuant to this provision shall be to further the act and must be consistent with its purposes.~~

~~This bill, in conformance with those requirements, would declare that its provisions further the act and are consistent with its purposes.~~

~~Vote:  $\frac{2}{3}$ . Appropriation: no. Fiscal committee: ~~no~~ yes.~~  
~~State-mandated local program: no.~~

*The people of the State of California do enact as follows:*

- 1     SECTION 1. Section 290.46 of the Penal Code is amended to
- 2     read:
- 3     290.46. (a) On or before the dates specified in this section,
- 4     the Department of Justice shall make available information
- 5     concerning persons who are required to register pursuant to
- 6     Section 290 to the public via an Internet Web site as specified in
- 7     this section. The department shall update the Web site on an
- 8     ongoing basis. All information identifying the victim by name,
- 9     birth date, address, or relationship to the registrant shall be

1 excluded from the Web site. The name or address of the person's  
2 employer and the listed person's criminal history other than the  
3 specific crimes for which the person is required to register shall  
4 not be included on the Web site. The Web site shall be translated  
5 into languages other than English as determined by the  
6 department.

7 (b) (1) On or before July 1, 2005, with respect to a person  
8 who has been convicted of the commission or the attempted  
9 commission of any of the offenses listed in this subdivision or the  
10 statutory predecessors of any of these offenses, or any offense  
11 which, if committed or attempted to be committed in this state,  
12 would have been punishable as one or more of the offenses listed  
13 in this subdivision, the Department of Justice shall make  
14 available to the public via the Internet Web site his or her names  
15 and known aliases, a photograph, a physical description,  
16 including gender and race, date of birth, criminal history, the  
17 address at which the person resides, and any other information  
18 that the Department of Justice deems relevant, but not the  
19 information excluded pursuant to subdivision (a).

20 (2) This subdivision shall apply to the following offenses:

21 (A) Subdivision (b) of Section 207.

22 (B) Subdivision (b) of Section 209, except kidnapping to  
23 commit robbery.

24 (C) Paragraph (2) or (6) of subdivision (a) of Section 261.

25 (D) Section 264.1.

26 (E) Section 269.

27 (F) Subdivision (c) or (d) of Section 286.

28 (G) Subdivision (a), (b), or (c) of Section 288, provided that  
29 the offense is a felony.

30 (H) Subdivision (c) or (d) of Section 288a.

31 (I) Section 288.5.

32 (J) Subdivision (a) or (j) of Section 289.

33 (3) This subdivision shall also apply to any person who has  
34 ever been adjudicated a sexually violent predator as defined in  
35 Section 6600 of the Welfare and Institutions Code.

36 (c) (1) On or before July 1, 2005, with respect to a person  
37 who has been convicted of the commission or the attempted  
38 commission of any of the offenses listed in paragraph (2) or the  
39 statutory predecessors of any of these offenses, or any offense  
40 which, if committed or attempted to be committed in this state,

1 would have been punishable as one or more of the offenses listed  
2 in this subdivision, the Department of Justice shall make  
3 available to the public via the Internet Web site his or her names  
4 and known aliases, a photograph, a physical description,  
5 including gender and race, date of birth, criminal history, the  
6 community of residence and ZIP Code in which the person  
7 resides, and any other information that the Department of Justice  
8 deems relevant, but not the information excluded pursuant to  
9 subdivision (a). However, the address at which the person resides  
10 shall not be disclosed until a determination is made that the  
11 person is, by virtue of his or her additional prior or subsequent  
12 conviction of an offense listed in paragraph (2) of subdivision (a)  
13 of Section 290, subject to this subdivision. On or before July 1,  
14 2006, the Department of Justice shall determine whether any  
15 person convicted of an offense listed in paragraph (2) also has  
16 one or more prior or subsequent convictions of an offense listed  
17 in paragraph (2) of subdivision (a) of Section 290, and, for those  
18 persons, the Department of Justice shall make available to the  
19 public via the Internet Web site the address at which the person  
20 resides.

21 (2) This subdivision shall apply to the following offenses,  
22 provided that the person has one or more prior or subsequent  
23 convictions of an offense listed in paragraph (2) of subdivision  
24 (a) of Section 290:

25 (A) Section 220, except assault to commit mayhem.

26 (B) Paragraph (1), (3), or (4) of subdivision (a) of Section 261.

27 (C) Paragraph (2) of subdivision (b), or subdivision (f), (g), or  
28 (i), of Section 286.

29 (D) Paragraph (2) of subdivision (b), or subdivision (f), (g), or  
30 (i), of Section 288a.

31 (E) Subdivision (b), (d), (e), or (i) of Section 289.

32 (d) (1) On or before July 1, 2005, with respect to a person  
33 who has been convicted of the commission or the attempted  
34 commission of any of the offenses listed in this subdivision or the  
35 statutory predecessors of any of these offenses, or of any offense  
36 which, if committed or attempted to be committed in this state,  
37 would have been punishable as one or more of the offenses listed  
38 in this subdivision, the Department of Justice shall make  
39 available to the public via the Internet Web site his or her names  
40 and known aliases, a photograph, a physical description,

1 including gender and race, date of birth, criminal history, the  
2 community of residence and ZIP Code in which the person  
3 resides, and any other information that the Department of Justice  
4 deems relevant, but not the information excluded pursuant to  
5 subdivision (a) or the address at which the person resides.

6 (2) This subdivision shall apply to the following offenses:

7 (A) Section 220, except assault to commit mayhem, with no  
8 prior or subsequent conviction of an offense listed in paragraph  
9 (2) of subdivision (a) of Section 290.

10 (B) Subdivision (a) of Section 243.4, provided that the offense  
11 is a felony.

12 (C) Paragraph (1), (3), or (4) of subdivision (a) of Section 261,  
13 with no prior or subsequent conviction of an offense listed in  
14 paragraph (2) of subdivision (a) of Section 290.

15 (D) Section 266, provided that the offense is a felony.

16 (E) Section 266c, provided that the offense is a felony.

17 (F) Section 266j.

18 (G) Section 267.

19 (H) Paragraph (2) of subdivision (b), or subdivision (f), (g), or  
20 (i), of Section 286, with no prior or subsequent conviction of an  
21 offense listed in paragraph (2) of subdivision (a) of Section 290.

22 (I) Subdivision (c) of Section 288, provided that the offense is  
23 a misdemeanor.

24 (J) Paragraph (2) of subdivision (b), or subdivision (f), (g), or  
25 (i), of Section 288a, with no prior or subsequent conviction of an  
26 offense listed in paragraph (2) of subdivision (a) of Section 290.

27 (K) Subdivision (b), (d), (e), or (i) of Section 289, with no  
28 prior or subsequent conviction of an offense listed in paragraph  
29 (2) of subdivision (a) of Section 290.

30 (L) Section 647.6.

31 ~~(e) (1) If a person has been convicted of the commission or~~  
32 ~~the attempted commission of any of the offenses listed in this~~  
33 ~~subdivision or the statutory predecessors of any of these offenses,~~  
34 ~~or of any offense which, if committed or attempted to be~~  
35 ~~committed in this state, would have been punishable as one or~~  
36 ~~more of the offenses listed in this subdivision, and he or she has~~  
37 ~~been convicted of no other offense listed in subdivision (b), (c),~~  
38 ~~or (d) other than those listed in this subdivision, that person may~~  
39 ~~file an application for exclusion from the Internet Web site with~~  
40 ~~the Department of Justice. If the department determines that the~~

1 ~~person meets the requirements of this subdivision, the department~~  
2 ~~shall grant the exclusion and no information concerning him or~~  
3 ~~her shall be made available via the Internet Web site described in~~  
4 ~~this section. He or she bears the burden of proving the facts that~~  
5 ~~make him or her eligible for exclusion from the Internet Web~~  
6 ~~site. However, a person who has filed for or been granted an~~  
7 ~~exclusion from the Internet Web site is not relieved of his or her~~  
8 ~~duty to register as a sex offender pursuant to Section 290 nor~~  
9 ~~from any otherwise applicable provision of law.~~

10 ~~(2) This subdivision shall apply to the following offenses:~~

11 ~~(A) A felony violation of subdivision (a) of Section 243.4.~~

12 ~~(B) Section 647.6, provided the offense is a misdemeanor.~~

13 ~~(C) An offense listed in subdivision (b), (e), or (d) if the~~  
14 ~~offender is eligible for, granted, and successfully completes~~  
15 ~~probation pursuant to Section 1203.066 of the Penal Code.~~

16 ~~(f)~~

17 ~~(e) The Department of Justice shall make a reasonable effort to~~  
18 ~~provide notification to persons who have been convicted of the~~  
19 ~~commission or attempted commission of an offense specified in~~  
20 ~~subdivision (b), (c), or (d), that on or before July 1, 2005, the~~  
21 ~~department is required to make information about him or her~~  
22 ~~available to the public via an Internet Web site as specified in~~  
23 ~~this section. The Department of Justice shall also make a~~  
24 ~~reasonable effort to provide notice that he or she may be eligible~~  
25 ~~for exclusion from the Internet Web site if he or she may have~~  
26 ~~been convicted of an offense for which exclusion is available~~  
27 ~~pursuant to subdivision (e).~~

28 ~~(g)~~

29 ~~(f) Notwithstanding Section 6254.5 of the Government Code,~~  
30 ~~disclosure of information pursuant to this section is not a waiver~~  
31 ~~of exemptions under Chapter 3.5 (commencing with Section~~  
32 ~~6250) of Title 1 of Division 7 of the Government Code and does~~  
33 ~~not affect other statutory restrictions on disclosure in other~~  
34 ~~situations.~~

35 ~~(h)~~

36 ~~(g) (1) Any person who uses information disclosed pursuant~~  
37 ~~to the Internet Web site to commit a misdemeanor shall be~~  
38 ~~subject to, in addition to any other penalty or fine imposed, a fine~~  
39 ~~of not less than ten thousand dollars (\$10,000) and not more than~~  
40 ~~fifty thousand dollars (\$50,000).~~

(2) Any person who uses information disclosed pursuant to the Internet Web site to commit a felony shall be punished, in addition and consecutive to any other punishment, by a five-year term of imprisonment in the state prison.

(i)

(h) Any person who is required to register pursuant to Section 290 who enters the Web site is punishable by a fine not exceeding one thousand dollars (\$1,000), imprisonment in a county jail for a period not to exceed six months, or by both that fine and imprisonment.

(j)

(i) (1) A person is authorized to use information disclosed pursuant to this section only to protect a person at risk.

(2) Except as authorized under paragraph (1) or any other provision of law, use of any information that is disclosed pursuant to this section for purposes relating to any of the following is prohibited:

(A) Health insurance.

(B) Insurance.

(C) Loans.

(D) Credit.

(E) Employment.

(F) Education, scholarships, or fellowships.

(G) Housing or accommodations.

(H) Benefits, privileges, or services provided by any business establishment.

(3) This section shall not affect authorized access to, or use of, information pursuant to, among other provisions, Sections 11105 and 11105.3, Section 8808 of the Family Code, Sections 777.5 and 14409.2 of the Financial Code, Sections 1522.01 and 1596.871 of the Health and Safety Code, and Section 432.7 of the Labor Code.

(4) (A) Any use of information disclosed pursuant to this section for purposes other than those provided by paragraph (1) or in violation of paragraph (2) shall make the user liable for the actual damages, and any amount that may be determined by a jury or a court sitting without a jury, not exceeding three times the amount of actual damage, and not less than two hundred fifty dollars (\$250), and attorney's fees, exemplary damages, or a civil penalty not exceeding twenty-five thousand dollars (\$25,000).

(B) Whenever there is reasonable cause to believe that any person or group of persons is engaged in a pattern or practice of misuse of the information available via the Internet Web site in violation of paragraph (2), the Attorney General, any district attorney, or city attorney, or any person aggrieved by the misuse is authorized to bring a civil action in the appropriate court requesting preventive relief, including an application for a permanent or temporary injunction, restraining order, or other order against the person or group of persons responsible for the pattern or practice of misuse. The foregoing remedies shall be independent of any other remedies or procedures that may be available to an aggrieved party under other provisions of law, including Part 2 (commencing with Section 43) of Division 1 of the Civil Code.

~~(k)~~

(j) On or before July 1, 2006, and every year thereafter, the Department of Justice shall make a report to the Legislature concerning the operation of this section.

~~(h)~~

(k) The Department of Justice and its employees shall be immune from liability for good faith conduct under this section.

*SEC. 2. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:*

*In order to better protect the people of California from sex offenders in their midst, it is necessary that this measure take effect immediately as an urgency statute.*

~~SECTION 1. Section 130140 of the Health and Safety Code is amended to read:~~

~~130140. Any county or counties developing, adopting, promoting, and implementing local early childhood development programs consistent with the goals and objectives of this act shall receive moneys pursuant to paragraph (2) of subdivision (d) of Section 130105 in accordance with the following provisions:~~

~~(a) For the period between January 1, 1999, and June 30, 2000, county commissions shall receive the portion of the total moneys available to all county commissions equal to the percentage of the number of births recorded in the relevant county (for the most recent reporting period) in proportion to the~~



1 entire number of births recorded in California (for the same  
2 period), provided that each of the following requirements has  
3 first been satisfied:

4 (1) The county's board of supervisors has adopted an  
5 ordinance containing the following minimum provisions:

6 (A) The establishment of a county children and families  
7 commission. The county commission shall be appointed by the  
8 board of supervisors and shall consist of at least five but not  
9 more than nine members:

10 (i) Two members of the county commission shall be from  
11 among the county health officer and persons responsible for  
12 management of the following county functions: children's  
13 services, public health services, behavioral health services, social  
14 services, and tobacco and other substance abuse prevention and  
15 treatment services:

16 (ii) One member of the county commission shall be a member  
17 of the board of supervisors:

18 (iii) The remaining members of the county commission shall  
19 be from among the persons described in clause (i) and persons  
20 from the following categories: recipients of project services  
21 included in the county strategic plan; educators specializing in  
22 early childhood development; representatives of a local child  
23 care resource or referral agency, or a local child care  
24 coordinating group; representatives of a local organization for  
25 prevention or early intervention for families at risk;  
26 representatives of community-based organizations that have the  
27 goal of promoting nurturing and early childhood development;  
28 representatives of local school districts; and representatives of  
29 local medical, pediatric, or obstetric associations or societies. The  
30 majority of the membership of the commission shall consist of  
31 persons not described in clause (i) or (ii):

32 (B) The manner of appointment, selection, or removal of  
33 members of the county commission, the duration and number of  
34 terms county commission members shall serve, and any other  
35 matters that the board of supervisors deems necessary or  
36 convenient for the conduct of the county commission's activities,  
37 provided that members of the county commission shall not be  
38 compensated for their services, except they shall be paid  
39 reasonable per diem and reimbursement of reasonable expenses  
40 for attending meetings and discharging other official

1 responsibilities as authorized by the county commission. The  
2 ordinance shall grant the commission full discretion with respect  
3 to the manner of selection and appointment of the commission's  
4 chairperson.

5 (C) The requirement that the county commission adopt an  
6 adequate and complete county strategic plan for the support and  
7 improvement of early childhood development within the county.

8 (i) The county strategic plan shall be consistent with, and in  
9 furtherance of the purposes of, this act and any guidelines  
10 adopted by the state commission pursuant to subdivision (b) of  
11 Section 130125 that are in effect at the time the plan is adopted.

12 (ii) The county strategic plan shall, at a minimum, include the  
13 following: a description of the goals and objectives proposed to  
14 be attained; a description of the programs, services, and projects  
15 proposed to be provided, sponsored, or facilitated; and a  
16 description of how measurable outcomes of such programs,  
17 services, and projects will be determined by the county  
18 commission using appropriate reliable indicators. No county  
19 strategic plan shall be deemed adequate or complete until and  
20 unless the plan describes how programs, services, and projects  
21 relating to early childhood development within the county will be  
22 integrated into a consumer-oriented and easily accessible system.

23 (iii) The county commission shall, on at least an annual basis,  
24 be required to periodically review its county strategic plan and to  
25 revise the plan as may be necessary or appropriate.

26 (D) The requirement that the county commission conduct at  
27 least one public hearing on its proposed county strategic plan  
28 before the plan is adopted.

29 (E) The requirement that the county commission conduct at  
30 least one public hearing on its periodic review of the county  
31 strategic plan before any revisions to the plan are adopted.

32 (F) The requirement that the county commission submit its  
33 adopted county strategic plan, and any subsequent revisions  
34 thereto, to the state commission.

35 (G) The requirement that the county commission prepare and  
36 adopt an annual audit and report pursuant to Section 130150. The  
37 county commission shall conduct at least one public hearing prior  
38 to adopting any annual audit and report.

39 (H) The requirement that the county commission conduct at  
40 least one public hearing on each annual report by the state

~~commission prepared pursuant to subdivision (b) of Section 130150.~~

~~(1) Two or more counties may form a joint county commission, adopt a joint county strategic plan, or implement joint programs, services, or projects.~~

~~(2) The county's board of supervisors has established a county commission and has appointed a majority of its members.~~

~~(3) The county has established a local Children and Families Trust Fund pursuant to subparagraph (A) of paragraph (2) of subdivision (d) of Section 130105.~~

~~(b) Notwithstanding any provision of this act to the contrary, no moneys made available to county commissions under subdivision (a) shall be expended to provide, sponsor, or facilitate any programs, services, or projects for early childhood development until and unless the county commission has first adopted an adequate and complete county strategic plan that contains the provisions required by clause (ii) of subparagraph (C) of paragraph (1) of subdivision (a).~~

~~(c) In the event that any county elects not to participate in the California Children and Families Program, the moneys remaining in the California Children and Families Trust Fund shall be reallocated and reappropriated to participating counties in the following fiscal year.~~

~~(d) For the fiscal year commencing on July 1, 2000, and for each fiscal year thereafter, county commissions shall receive the portion of the total moneys available to all county commissions equal to the percentage of the number of births recorded in the relevant county (for the most recent reporting period) in proportion to the number of births recorded in all of the counties participating in the California Children and Families Program (for the same period), provided that each of the following requirements has first been satisfied:~~

~~(1) The county commission has, after the required public hearings, adopted an adequate and complete county strategic plan conforming to the requirements of subparagraph (C) of paragraph (1) of subdivision (a), and has submitted the plan to the state commission.~~

~~(2) The county commission has conducted the required public hearings, and has prepared and submitted all audits and reports required pursuant to Section 130150.~~

1     ~~(3) The county commission has conducted the required public~~  
2     ~~hearings on the state commission annual reports prepared~~  
3     ~~pursuant to subdivision (b) of Section 130150.~~

4     ~~(e) In the event that any county elects not to continue~~  
5     ~~participation in the California Children and Families Program,~~  
6     ~~any unencumbered and unexpended moneys remaining in the~~  
7     ~~local Children and Families Trust Fund shall be returned to the~~  
8     ~~California Children and Families Trust Fund for reallocation and~~  
9     ~~reappropriation to participating counties in the following fiscal~~  
10    ~~year.~~

11    ~~(f) For purposes of this section, “relevant county” means the~~  
12    ~~county in which the mother of the child whose birth is being~~  
13    ~~recorded resides.~~

14    ~~SEC. 2. The Legislature finds and declares that this act~~  
15    ~~further the California Children and Families Act of 1998,~~  
16    ~~enacted by Proposition 10 at the November 3, 1998, general~~  
17    ~~election, and is consistent with its purposes.~~